

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[FV95-946-2PR]

Irish Potatoes Grown in Washington; Establishment of Interest Charge on Overdue Assessment Payments and Clarification of Operating Reserve Authority

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish an interest charge on overdue assessments under the marketing order and clarify authority for an operating reserve not to exceed approximately two fiscal periods' expenses. This proposed rule would contribute to the efficient operation of the order by ensuring that adequate funds are available to cover authorized expenses incurred under the order. This proposed rule was recommended by the State of Washington Potato Committee (Committee), the agency responsible for the local administration of the order.

DATES: Comments must be received by May 3, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090-6456, Fax: (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220

SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724; or James B. Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2170.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR part 946), both as amended, regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. If adopted, the proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington potatoes subject to regulation under the order and approximately 450 producers of Washington potatoes in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of potato handlers and producers regulated under the order may be classified as small entities.

This proposed rule would (1) establish an interest charge of one (1) percent per month to be applied to any assessment balance remaining unpaid after 30 days, and (2) clarify that funds in the operating reserve may not exceed approximately two fiscal periods' expenses.

These proposed changes were recommended by the Committee at its February 22, 1995, meeting. Thirteen of the 15-member Committee attended the meeting. All in attendance favored the proposed changes. The proposed changes would contribute to the efficient operation of the program by ensuring that adequate funds are available to cover the Committee's authorized expenses.

Section 946.41 of the order specifies that if handlers do not pay their assessments within the time prescribed by the Committee, the assessments may be increased by a late payment charge or an interest charge, or both, at rates prescribed by the Committee with the approval of the Secretary.

The Committee depends upon handler assessment payments for operating funds. Handlers are invoiced by the Committee on a monthly basis. However, some handlers are continually late with their assessment payments, and a few wait until the end of the

season to remit to the Committee what is owed. When assessments are not paid in a timely manner, the handlers paying assessments on time are placed in an unfair situation compared with the delinquent handlers, who have use of that unpaid assessment money for other purposes, including earning interest in a financial institution.

As part of its collection efforts, the Committee has requested handlers to promptly submit delinquent assessment payments. However, such requests have not substantially decreased the frequency of delinquent payments. To facilitate the collection of assessments needed for the maintenance and functioning of the Committee, it recommended the establishment of an interest charge of one (1) percent per month to be applied to any assessment balance remaining unpaid after 30 days, and that this one (1) percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated unpaid interest. The Committee believes that these charges are high enough to encourage timely assessment payments. The charges are within the interest range customarily charged by banks on commercial accounts.

This proposed change is intended to encourage handlers to pay their assessments when due, thereby eliminating inequities. The Committee believes that this would be an effective means to ensure timely payments. This proposed change is expected to reduce the need for Department involvement with compliance efforts and thereby reduce the costs for the government to administer the order.

Effective June 5, 1972, § 946.42 of the order was revised to authorize the Committee to maintain an operating reserve not to exceed approximately two fiscal periods' operational expenses, or such lower limits as the Committee, with the approval of the Secretary, may establish (37 FR 10915; June 1, 1972). Funds in the reserve are available for use by the Committee for expenses authorized pursuant to § 946.40. Since June of 1972, the Committee has conducted its financial operations with a reserve approximating two fiscal periods' expenses and has not recommended a lower limit.

However, the proviso in paragraph (a) of § 946.142 of Subpart—Rules and Regulation's (7 CFR 946.100–946.142; 32 FR 16199; November 28, 1967) limiting the operating reserve to approximately one fiscal year's expenses has never been updated to bring it into conformity with amended paragraph (a) of § 946.42 of the order. This proposed rule proposes to make

that conforming change by changing the words "one fiscal year's expenses" at the end of the proviso to "two fiscal periods' expenses".

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 15-day comment period is deemed appropriate to allow interested persons to respond to this proposal. The Committee would like to impose interest charges on delinquent handlers as soon as possible to encourage such handlers to pay assessments in a timely manner. All written comments received within the comment period will be considered before a final rule is issued on this matter.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 946 be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 946.141 is added to read as follows:

§ 946.141 Late payment and interest charge.

The Committee shall impose an interest charge on any handler who fails to pay his or her assessment within thirty (30) days of the billing date shown on the handler's assessment statement received from the Committee. The interest charge shall, after 30 days, be one percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment, the one percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated unpaid interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

3. In § 946.142, paragraph (a) is revised to read as follows:

§ 946.142 Operating reserve.

(a) The Committee, with the approval of the Secretary, may carry over excess funds into subsequent fiscal periods as an operating reserve: *Provided*, That funds in the operating reserve may not

exceed approximately two fiscal periods' expenses.

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Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–9453 Filed 4–17–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–29–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require a one-time operational test of the No. 1 pitot heating system, and repair or replacement of failed elements. This AD also would require modification of certain electrical wiring, and replacement of the pitot head and a certain relay. This proposal is prompted by reports indicating that the No. 1 Air Data Computer (ADC #1) failed due to icing of the No. 1 pitot tube. The actions specified by the proposed AD are intended to prevent icing of the No. 1 pitot tube, which could result in failure of the No. 1 ADC or output of erroneous airspeed data to all on-side subsidiary systems including the Automatic Flight Control and Augmentation System (AFCAS).

DATES: Comments must be received by May 30, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.